

April 26, 1995

DOCKET NO. P-407, 421/CP-87-216

ORDER DENYING RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
Tom Burton  
Joel Jacobs  
Marshall Johnson  
Dee Knaak

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Petition of Certain  
Subscribers in the Cannon Falls Exchange for  
Extended Area Service to the Minneapolis/St.  
Paul Metropolitan Calling Area

ISSUE DATE: April 26, 1995

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**PROCEDURAL HISTORY**

On September 2, 1994, the Commission issued its ORDER ESTABLISHING RATES FOR POLLING AND ADOPTING LOWER PRICED ALTERNATIVE. The Commission directed polling to proceed in the Cannon Falls exchange to determine whether there was adequate subscriber support to meet the third and final extended area service (EAS) statutory requirement.

Between November 15 and December 30, 1994, the Commission conducted a poll of subscribers in GTE Minnesota's (GTE's) Cannon Falls exchange to determine whether a majority of those voting favored or opposed EAS with the metro calling area.

On December 6, 1994, the Commission received a letter from Doug Duncan, a Cannon Falls exchange subscriber. Mr. Duncan complained that the letter sent with the ballots was unclear because it did not explain that there are two EAS options, one expensive (the flat rate EAS) and one inexpensive (the Community Plus Plan).

On December 30, 1994, the Commission received a letter from Dallas Larson, city administrator of Cannon Falls. Mr. Larson stated that the outcome of the EAS voting may be biased because of the explanatory materials that were included with the ballot. Mr. Larson said that the higher priced alternative was highlighted in bold while the lower priced alternative was "obscurely placed in a subsequent paragraph on the following page." Mr. Larson argued that there may be a need to re-ballot if the EAS is voted down, especially if the results are close.

On January 4, 1995, the Commission received a letter from Wayne Bell, another Cannon Falls exchange subscriber. Mr. Bell protested the ballot and letter that were used by the Commission in the polling process. He characterized the EAS as presenting three options: no EAS, unlimited calling, and restricted EAS. The restricted EAS option was described on the back page of the letter, which may have been overlooked by some of the subscribers.

Mr. Bell believed that it would be impossible for the EAS to be passed for either the unlimited or the restricted EAS. He requested that the ballots from the recently concluded polling not be counted and that new ballots be sent out along with a letter explaining all three options on the same page.

On January 30, 1995, the Commission issued its ORDER REVIEWING OBJECTIONS, CERTIFYING POLLING RESULTS, DENYING PETITION, AND CLOSING DOCKET. In that Order, the Commission reviewed the objections to the polling materials and concluded that "the polling materials accurately and effectively presented the EAS question to Cannon Falls subscribers and were free of the anti-EAS bias asserted by the three objecting subscribers." Order at page 4. The Commission then certified the polling results which showed that a majority of subscribers voting were opposed to the EAS proposal. Based on these results, the Commission denied the petition for EAS and closed the docket.

On February 21, 1995, the City of Cannon Falls (the City) filed a petition for reconsideration of the Commission's January 30, 1995 Order.

On April 4, 1995, the Commission met to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **I. THE CITY'S PETITION**

The City requested that the Commission find

- that the letter used to poll subscribers in the Cannon Falls exchange is not similar to letters used in the other exchanges polled for EAS,
- that, consequently, the polling materials inaccurately and unfairly presented the EAS question to Cannon Falls subscribers and were biased against the EAS petition in Cannon Falls;
- that, consequently, the Cannon Falls EAS polling results should not be certified and re-balloting should be conducted.

In support of its assertion of lack of similarity, the City noted that while the ballots used in 11 other metro area exchanges presented information regarding the lower-priced alternative on the first page of the letter, the ballot used in the Cannon Falls exchange presented that information on the second page.

In support of its argument that this dissimilarity warrants rebalotting, the City reviewed the results of the 11 Metro EAS ballots conducted 1) **after** the legislature required that the lower priced alternative be offered and disclosed in the balloting and 2) **immediately prior** to the Cannon Falls balloting. The City noted that

- in the first six ballots conducted after a lower priced alternative was required, the full cost and lower priced alternative were described on the first page in a comparable column format and all but one passed;
- in the next five ballots, the lower priced alternative was described on the first page and all but one passed;
- among the 9 exchanges which approved EAS were two exchanges (Mayer and Norwood) which had (prior to the legislative mandate to offer and disclose the lower priced alternative) voted to reject EAS; and
- of the 12 ballots conducted subsequent to the legislative mandate regarding the lower priced alternative, Cannon Falls had the highest EAS flat rate.

As evidence supporting its contention that a significant number of Cannon Falls may have been unaware of the lower cost alternative because of the second page placement, the City provided an affidavit from the City Administrator that one business customer told the City Administrator that he received the polling materials but was unaware of the lower priced alternative.

## **II. COMMISSION ANALYSIS**

In its Petition for Reconsideration, the City locates the prejudicial aspect of the balloting materials in the fact that information about the lower-priced alternative did not appear on the first page of the letter which accompanied the ballot. However, in its January 30, 1995 Order, the Commission discussed this alleged prejudicial placement and stated:

Regarding the location of the information about the lower cost alternative, it is suggested that appearance of this information on the second page prejudiced the chances for a fair poll because subscribers may not read the second page.

However, the letter clearly has a second page<sup>1</sup> so any failure to read the second page could not be inadvertent. Moreover, the information is not "buried" or "obscurely placed" on the second page as one of the objectors asserted: as noted earlier, information on the lower cost alternative appears prominently, right at the top of the page, introduced by a bold, capitalized headline.

In order to find that the second page placement of this information was prejudicial, therefore, the Commission would have to believe that subscribers having adequate interest to read the first page of a letter on such an important topic would not read the second page. The Commission simply cannot accept such a speculative suggestion.

The only direct evidence provided by the City related to customer confusion is the report, in the City Administrator's affidavit, that one business customer told him that he (the business customer) had "received the ballot materials" but was unaware of the lower priced alternative. For several reasons, this report does not support a finding of significant customer confusion, nor does it show that any "No" vote or any decision not to vote "Yes" stemmed from the letter's format.

1. The reported experience of one person cannot be safely generalized to a significant number of Cannon Falls customers.
2. It is not clear from the affidavit whether the customer in question read even page one of the letter in question. All we are told is that he says he received the ballot materials. He may be equally unaware of what page 1 contains. A customer's failure to even read the first page surely cannot be attributed to the letter's format. On the other hand, he may have glanced as attentively to page 2 as to page 1. The Commission is responsible to provide materials that are comprehensible, but cannot be held to guarantee that a customer will comprehend and remember what is provided.
3. It is not known whether the customer voted yes, no, or not at all. The affidavit does not reveal how, if at all, lack of knowledge about the lower priced alternative affected the customer's decision.

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<sup>1</sup> The letter is not signed on the first page, which indicates to the reader that the letter continues on the back. The third paragraph indicates the existence of a second page by referring to a chart "on the reverse side of this letter". Perhaps most compelling, the printing on the back (page 2) can be easily seen by anyone looking at the first page.

The City also argued that the polling results in the 11 cited Metro EAS dockets show that placement of the information on page 1 is critical to community approval of an EAS petition and that failure to display this information on page 1 renders the Cannon Falls balloting materials inaccurate and biased against the petition.

The Commission is not persuaded by the City's arguments. First, the association of first page placement with a vote approving EAS is not nearly as uniform as the City suggests, even in the small universe of exchanges cited by the City. Despite page one placement of information about the lower cost alternative, a not insignificant number of exchanges (2 of the 11 or 18% of the cited exchanges) rejected EAS: LeSueur and Northfield.

Further, 2 of the 9 exchanges that **did** approve EAS (Norwood and Mayer) did so in circumstances so clearly distinct from Cannon Falls as to render them useless as examples of what could have happened in Cannon Falls "but for" the location of information about the lower priced alternative on page 2. Both exchanges approved EAS on a second try, balloting on a second EAS petition that had been filed two years after the defeat of an initial EAS petition. Moreover, the defeat of EAS the first time around in Norwood cannot be associated (let alone causally linked) with the unavailability of a lower priced alternative. United Telephone Company which serves Norwood offered local measured service (a lower priced alternative to EAS) in Norwood at the time of the first EAS ballot.

Most fundamentally, however, association is not proof of causation. The City assumes rather than shows that page one placement of the information in question is causally linked with voters approving EAS and vice versa, that page 2 placement is causally linked to voter rejection of EAS.

Finally, the Commission does not accept the implication that customer approval of EAS in the cited exchanges shows that the balloting materials used there were fair and that any deviation from those materials is unfair. A determination of the fairness of balloting materials does not come from looking to see whether the result of the balloting is favorable to the petitioners. Such a determination must be based on an examination of the materials in question. The Commission conducted such an examination fully and carefully in its January 30, 1995 Order.

#### **IV. COMMISSION ACTION**

Based on the foregoing analysis, the Commission finds that the City has not presented arguments or evidence which cause the Commission to change the findings and conclusions in the January 30, 1995 Order. Accordingly, the City's Petition for Reconsideration will be denied and the Order affirmed.

**ORDER**

1. The Petition for Reconsideration of the Commission's January 30, 1995 Order in this matter is denied.
2. The Commission's January 30, 1995 Order in this matter is affirmed.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)